

**FILED**

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6 Sui juris  
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CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
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5 **UNITED STATES DISTRICT COURT**  
6 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

7 David Avila, Case No.: 2:24-cv-2264-TLN-CSK  
8 John Hayne,  
9 PLAINTIFFS, SUR-REPLY TO DEFENDANTS REPLY  
10 vs.  
11 NEWREZ LLC, d/b/a SHELLPOINT  
12 MORTGAGE SERVICING, et al,  
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14 DEFENDANTS,  
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(ECF 27)

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18 **INTRODUCTION/BACKGROUND**  
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21 PLAINTIFFS, David-Anthony Avila and John Hayne jointly submit an action against an  
22 unlawful foreclosure because of the actions of the DEFENDANTS. The PLAINTIFFS have  
23 shown evidence that hazard insurance was obtained by the PLAINTIFFS since the inception of  
24 the loan. DEFENDANTS failed miserably by either ignoring or responding insufficiently to the  
25 myriad of notifications, and other correspondence to correct their error on the record. The  
26 defense submitted on document 23-2 page 83 of 160 that the customer initiated cancellation.  
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1 This was true because the plaintiffs' S switched insurance carriers to where the property was  
2 covered twice by both private insurances obtained by the plaintiffs. This can be verified and  
3 validated by the testimony of plaintiff's witness and insurance carrier David Giddings. The  
4 Defense attempts to dismiss the case before DEFENDANTS' fatal errors are proven in a hearing  
5 That adjudicates the matter.

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7 The DEFENDANTS have been cashing checks sent by Mr. AVILA from The inception of the  
8 loan and magically makes claims that AVILA has no secured and vested interest In the property.  
9 This is speculation on behalf of the defense.

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11 ARGUMENT  
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13 PLAINTIFFS respectfully submit this Surreply in opposition to Defendants' Motion to Dismiss,  
14 addressing several mischaracterizations and unfounded assertions in DEFENDANTS' Reply  
15 Including the over 500 Pages of documents introduced on the record.

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18 **I. Plaintiffs' Complaint Satisfies Rule 8 Pleading Requirements**

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20 DEFENDANTS' argument that PLAINTIFFS' Complaint fails to meet Rule 8's requirements  
21 overlooks the specificity provided within the Complaint. PLAINTIFFS have adequately  
22 articulated the nature of the alleged unlawful conduct by DEFENDANTS, including the lack of  
23 standing due to void assignments and unauthorized attempts to enforce the loan through  
24 foreclosure. Contrary to DEFENDANTS' claims, PLAINTIFFS are not seeking a "free property"  
25 but are contesting DEFENDANTS' standing as a holder in due course challenging the right to  
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1 enforce a loan that has, as alleged, been extinguished or otherwise rendered unenforceable by  
2 DEFENDANTS' actions omissions, and concealment  
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5 **II. Avila's Standing as a Plaintiff**  
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7 While DEFENDANTS argue that PLAINTIFF AVILA lacks standing due to non-signatory  
8 status, California courts have recognized standing in similar cases where a party holds an interest  
9 in the property. Given the partnership interest and investment interest in the property,  
10 PLAINTIFF AVILA has a valid and protectable interest in opposing wrongful foreclosure  
11 actions. After the property had a devastating fire annihilating the majority of the house,  
12 PLAINTIFF AVILA added money to the insurance claim by privately securing owner/contractor  
13 services and materials to significantly increase the standing value of the main house on the  
14 property. This also fortified the ongoing private contractual agreement between JOHN HAYNE  
15 and DAVID AVILA concerning the property making AVILA a secured partner in which a lien  
16 has been filed on the property securing AVILA'S interest  
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20 **III. FDCPA Claim is Properly Asserted**  
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23 DEFENDANTS mistakenly assert that Shellpoint, as a servicer, does not qualify as a debt  
24 collector under the FDCPA, yet numerous courts have held that debt servicers acting post-default  
25 can indeed fall within FDCPA's scope. Moreover, PLAINTIFFS have detailed the specific debt  
26 collection activities by Defendants that constitute violations, particularly those related to force-  
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1 placed insurance and improper foreclosure practices. Obduskey v. McCarthy, cited by  
2 DEFENDANTS, is inapplicable here, as PLAINTIFFS allege debt collection practices that go  
3 beyond mere nonjudicial foreclosure. Moreover, numerous shell point documents state “NEW  
4 REZ LLC doing business as SHELLPOINT MORTGAGE SERVING is a collector.”  
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7 **IV. Trespass Claim is Adequately Pledged**

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9 DEFENDANTS mischaracterize PLAINTIFFS’ trespass claim. PLAINTIFFS allege that  
10 DEFENDANTS’ recording of documents—without valid authority—amounts to an unlawful  
11 claim of ownership interest, creating a cloud on title and constituting a trespass under California  
12 law.  
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15 **V. Breach of Contract**  
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18 PLAINTIFFS’ breach of contract claim is based on DEFENDANTS’ failure to honor obligations  
19 under the mortgage and related agreements, including the extinguishment of the loan obligation  
20 through PLAINTIFFS’ performance offer. DEFENDANTS’ failure to address these allegations  
21 reflects an attempt to obfuscate the central contractual breaches at issue.  
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24 **VI. Fraud Claims are Pledged with Particularity**  
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1 Contrary to DEFENDANTS' assertions, PLAINTIFFS have pleaded fraud with the required  
2 particularity by specifying that DEFENDANTS falsely represented their authority to enforce the  
3 loan. PLAINTIFFS detail the nature of DEFENDANTS' misrepresentations, which were  
4 material and relied upon to PLAINTIFFS' detriment. These include the specific documents  
5 DEFENDANTS recorded without authority, resulting in the wrongful initiation of foreclosure.  
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8 **VII. Promissory Estoppel**

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10 PLAINTIFFS' promissory estoppel claim is based on DEFENDANTS' promises and  
11 representations regarding loan modifications and debt relief options, upon which PLAINTIFFS  
12 reasonably relied. DEFENDANTS' failure to honor these representations, as pleaded, has  
13 resulted in damages to PLAINTIFFS, establishing a clear basis for relief.  
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17 **VIII. Quiet Title and Section 17200 Claims**

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19 PLAINTIFFS' quiet title claim addresses DEFENDANTS' lack of a legally enforceable interest  
20 in the property, especially following PLAINTIFFS' alleged extinguishment of the loan.  
21 Regarding the Section 17200 claim, PLAINTIFFS allege specific acts of unfair and unlawful  
22 business practices that impact both PLAINTIFFS and the public at large, thereby satisfying  
23 standing and substantive elements under California's UCL.  
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1 In conclusion, PLAINTIFFS respectfully request the Court deny DEFENDANTS' Motion to  
2 Dismiss. The Operative Complaint contains well-pleaded claims with specific factual and legal  
3 support that warrant this case proceeding to discovery and further adjudication.

4 The complaint is also the result of all the PLAINTIFFS' notices with adequate proof by  
5 presenting copies of the in force insurance policies covering the dates of the imposed forced  
6 placed insurance being totally disregarded by DEFENDANTS. Further, the use of threat of  
7 foreclosure and their actual recording at the county recorders office which calendars dates for  
8 public Trustee sale which plaintiff considers this extortion, to force payment of their fraudulent  
9 charges.

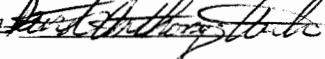
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Respectfully, 

15 David- Anthony; Avila

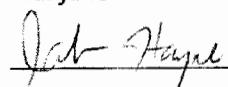
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Sui juris

  
John Hayne

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